

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MAIL CLASSIFICATION SCHEDULE

Docket No. RM2016-8

**UNITED STATES POSTAL SERVICE COMMENTS
ON PROPOSED RULES CONCERNING PRODUCT LISTS AND THE MAIL
CLASSIFICATION SCHEDULE
(May 12, 2016)**

Pursuant to Order No. 3213,¹ the United States Postal Service (Postal Service) hereby submits its initial comments on the Commission's proposed rules concerning product lists and the Mail Classification Schedule (MCS).

INTRODUCTION

On April 6, 2016, the Commission issued Order No. 3213, proposing to amend existing rules codified at 39 C.F.R. part 3020. The rulemaking has a stated purpose of "codify[ing] the current practice" for updating and publishing product lists and the MCS – a practice that has evolved over a period of years since enactment of the Postal Accountability and Enhancement Act (PAEA), reflecting feedback from many stakeholders.² The Postal Service appreciates the Commission's efforts to clarify its rules and bring them in line with current practice. These comments are intended to further the goal of simplifying and clarifying the Commission's procedures consistent with applicable provisions of the PAEA.

¹ Order No. 3213, Notice of Proposed Rulemaking Concerning Product Lists and the Mail Classification Schedule, PRC Docket No. RM2016-8 (Apr. 6, 2016).

² *Id.* at 1, 4.

ANALYSIS

I. Support for the Commission's Overall Approach

Overall, the Postal Service supports the Commission's proposal to include product lists, but not the MCS, in the Code of Federal Regulations (C.F.R.). The PAEA extends statutory authority to the Commission to review and approve changes to the lists of Market Dominant and Competitive products upon request by the Postal Service.³ Section 3642 includes specific requirements that (1) the Postal Service publish a notice in the Federal Register when it proposes a change to a product list and (2) the Commission publish any changes it approves to a product list in the Federal Register.⁴ In contrast, as the Commission noted in a recent Notice of Proposed Rulemaking, there is no statutory requirement that it publish notices regarding proposed modifications or draft changes to the MCS.⁵ In fact, there is no reference to a mail classification schedule at all in Section 3642. The MCS simply describes how the Postal Service categorizes mail products included in the Market Dominant and Competitive product lists, and provides additional details about each listed product.⁶

Within this statutory and regulatory context, it makes sense that the product lists and the MCS should be treated separately. Moreover, the Commission's rules already provide – and under its proposed rules, would continue to provide – notice and an opportunity for public comment on changes to both the product lists and the MCS.⁷

³ See 39 U.S.C. § 3642.

⁴ 39 U.S.C. § 3642(d).

⁵ Order No. 3039, Notice of Proposed Rulemaking Regarding Minor Amendments to Commission Rules Regarding Proposed Modifications to the Mail Classification Schedule, PRC Docket No. RM2016-5 (Jan. 20, 2016), at 2-3 (emphasis added).

⁶ See *id.*

⁷ See 39 C.F.R. part 3020, subparts B, C, D, and E.

Publishing the statutorily-required product lists in the C.F.R., while continuing to maintain an up-to-date, official copy of the MCS on the Commission's website, is a reasonable and manageable approach that is consistent with current practice.

II. Specific Comments on the Commission's Proposed Rules

The Commission's Proposed Rule 3020.1(b) includes new references to Sections 404(e) and 3641 of Title 39, neither of which is specifically identified in the existing part 3020.⁸ In discussing this proposed revision, the Commission states that it is required to establish and maintain lists of Postal Service products, and that the "starting point" for these product lists is the listing of Market Dominant and Competitive products in 39 U.S.C. §§ 3621(a) and 3631(a). The Commission then explains that its proposed new rule "expands upon this requirement by including products . . . identified as market tests pursuant to 39 U.S.C. 3641 and nonpostal pursuant to 39 U.S.C. 404(e)."⁹ The Commission notes that this change was adopted at the suggestion of the Public Representative in a previous proceeding relating to the MCS.¹⁰ In that proceeding, the Public Representative suggested that the Commission add a reference to Section 404(e) to its rules "as the basis for the nonpostal services to be listed in the MCS."¹¹

The Postal Service does not object to the inclusion of these statutory references in Proposed Rule 3020.1(b), but it is concerned that the Commission's explanation of the change – stating that it "expands upon" existing requirements – could create unnecessary confusion. Current Postal Service and Commission practice, which is

⁸ Compare Proposed Rule 39 C.F.R. § 3020.1(b) with existing 39 C.F.R. § 3020.1(a).

⁹ Order No. 3213 at 5-6.

¹⁰ *Id.* (citing Public Representative Comments on Notice of Proposed Rulemaking Concerning Mail Classification Schedule, PRC Docket No. RM2011-8 (March 24, 2011) [hereinafter "PR's 2011 Comments"], at 5).

¹¹ PR's 2011 Comments at 5.

already reflected in part 3020, is to include both nonpostal services and market tests in the Market Dominant and Competitive product lists.¹² Consistent with 39 U.S.C. § 404(e)(5), nonpostal services are already classified as either Market Dominant or Competitive depending on their characteristics; and market tests similarly are categorized as either Market Dominant or Competitive under 39 U.S.C. § 3641(b)(3). We do not understand the proposed new references to these statutory provisions to “expan[d] upon” or otherwise affect the substantive requirements or the scope of Commission review relating to nonpostal services or market tests. Rather, consistent with the Commission’s overall intent to codify current practice, and the Public Representative’s earlier Comments, it appears that the references to Sections 404(e) and 3641 in Proposed Rule 3020.1(b) simply clarify the sources of statutory authority for these types of products. The Commission may wish to confirm its intent in this regard.

The Postal Service also notes that the Commission has included new language in Proposed Rule 3020.4(b), providing that the Mail Classification Schedule shall include, in the descriptions of each Market Dominant and Competitive product, “the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each [Market Dominant or Competitive] product.”¹³ The requirement that product descriptions in the MCS include “size and weight limitations” appears duplicative of existing rule 39 C.F.R. § 3020.110, which provides that “[a]pplicable size and weight limitations for mail matter shall appear in the Mail Classification Schedule as part of the description of each product.” To avoid

¹² See 39 C.F.R. § 3020.13 (requiring the lists of Market Dominant and Competitive products to include, where applicable, “the identification of a product as an experimental product undergoing a market test” and “the identification of a product as a non-postal product”).

¹³ Proposed Rule 39 C.F.R. § 3020.4(b)(2)(ii)(A) & (b)(3)(ii)(A).

potential confusion, the Commission may wish to consider deleting existing rule 39 C.F.R. § 3020.110 or cross-referencing it in Proposed Rule 3020.4(b).

CONCLUSION

For the foregoing reasons, the Postal Service respectfully requests that the Commission consider these Comments in promulgating any final rules relating to product lists and the MCS.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Pricing & Product Support

Maria W. Votsch

475 L'Enfant Plaza, S.W.
Washington, DC 20260-1137
(202) 268-6525; Fax -6187
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